

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC.

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 16, 2008

5:13 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

1  
2 HEARING re Debtor's Motion, Pursuant to Section 105 of the  
3 Bankruptcy Code, for an Order Enforcing the Protections of  
4 Section 362 of the Bankruptcy Code  
5

6 HEARING re Motion to Extend Deadline to File Schedules or  
7 Provide Required Information : Debtor's Motion Pursuant to  
8 Bankruptcy Rules 1007(c) and 2002(d) (i) Extending the Time to  
9 File Schedules of Assets and Liabilities, Schedules of Current  
10 Income and Expenditures, Schedules of Executory Contracts and  
11 Unexpired Leases, and Statements of Financial Affairs and (ii)  
12 Waiving of the Requirements to File the Equity List and Provide  
13 Notice to Equity Security Holders  
14

15 HEARING re Debtor's Motion Pursuant to Section 105(a) of the  
16 Bankruptcy Code and Local Bankruptcy Rule 1007-2(d) for Waiver  
17 of the Requirements of Local Bankruptcy Rule 1007-2(a) and  
18 1007-2(b)  
19  
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1  
2 HEARING re Debtor's Motion Pursuant to Sections 105(a), 342(a),  
3 and 521(a)(1) of the Bankruptcy Code, Bankruptcy Rules 1007(a)  
4 and 2002(a), (f) and (1), and Local Bankruptcy Rule 1007-1 for  
5 (i) a Waiver of the Requirement to File a List of Creditors and  
6 (ii) Approval of the Form and Manner of Notifying Creditors of  
7 the Commencement of the Debtor's Chapter 11 Case

8  
9 HEARING re Motion of Lehman Brothers Holdings Inc. for Order,  
10 Pursuant to Section 105 of the Bankruptcy Code, Confirming  
11 Status of Clearing Advances

12  
13 HEARING re Motion to Authorize Application Pursuant to 28  
14 U.S.C. 156(c) and Local Rule 5075-1(a) for Authorization to (i)  
15 Employ and Retain Epiq Bankruptcy Solutions, LLC Claims and  
16 Noticing Agent for the Debtor, and (ii) Appoint Epiq Bankruptcy  
17 Solutions, LLC as Agent for the Bankruptcy Court

18  
19 HEARING re Debtor's Motion Pursuant to Section 105(a) of the  
20 Bankruptcy Code and Bankruptcy Rules 1015(c) and 9007 Seeking  
21 Authority to Implement Certain Notice and Case Management  
22 Procedures

23  
24  
25 Transcribed by: Lisa Bar-Leib

A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP

Attorneys for Debtor

767 Fifth Avenue

New York, NY 10153

BY: RICHARD P. KRASNOW, ESQ.

SHAI WAISMAN, ESQ.

MICHELE J. MEISES, ESQ.

GARRETT A. FAIL, ESQ.

WACHTELL, LIPTON, ROSEN & KATZ

Attorneys for JPMorgan Chase Bank, N.A.

51 West 52nd Street

New York, NY 10019

BY: HAROLD S. NOVIKOFF, ESQ.

AMY R. WOLF, ESQ.

1  
2 DEWEY & LEBOEUF LLP

3 Attorneys for Bank of New York and Mellon

4 125 West 55th Street

5 New York, NY 10019

6  
7 BY: SAMUEL S. KOHN, ESQ.

8 TIMOTHY Q. KARCHER, ESQ.

9  
10 THOMPSON & KNIGHT LLP

11 Attorneys for Chevron

12 919 Third Avenue

13 39th Floor

14 New York, NY 10022

15  
16 BY: IRA L. HERMAN, ESQ.

17  
18 CADWALADER, WICKERSHAM & TAFT LLP

19 Attorneys for Citibank, N.A.

20 One World Financial Center

21 New York, NY 10261

22  
23 BY: DERYCK A. PALMER, ESQ.

24 GEORGE DAVIS, ESQ.

1  
2 COVINGTON & BURLING LLP

3 Attorneys for Wilmington Trust Company as Indenture

4 Trustee

5 The New York Times Building

6 620 Eight Avenue

7 New York, NY 10016

8  
9 BY: SUSAN P. JOHNSTON, ESQ.

10  
11 MAYER BROWN LLP

12 1675 Broadway

13 New York, NY 10019

14  
15 BY: BRIAN TRUST, ESQ.

16  
17 DESHAW & CO.

18 120 West Forty-Fifth Street

19 39th Floor

20 Tower 45

21 New York, NY 10036

22  
23 BY: JO E. CHEN, ESQ.

1  
2 FEDERAL RESERVE BANK OF NEW YORK

3 33 Liberty Street

4 New York, NY 10045

5  
6 BY: SHARI LEVENTHAL, ESQ.

7  
8 UNITED STATES DEPARTMENT OF JUSTICE

9 Office of the United States Trustee

10 33 Whitehall Street

11 Suite 2100

12 New York, NY 10004

13  
14 BY: DIANA G. ADAMS, TRUSTEE

15 TRACY HOPE DAVIS, ESQ.

16  
17 HENNIGAN BENNETT & DORMAN

18 865 South Figueroa Street

19 Suite 2900

20 Los Angeles, CA 90017

21  
22 BY: SIDNEY P. LEVINSON, ESQ.

23 (TELEPHONICALLY)

1  
2 GOULSTON & STORRS P.C.

3 Attorneys for Interactive Data Corporation

4 400 Atlantic Avenue

5 Boston, MA 02110

6  
7 BY: DOUGLAS B. ROSNER, ESQ.

8 (TELEPHONICALLY)

9  
10 DUANE MORRIS LLP

11 30 South 17th Street

12 Philadelphia, PA 19103

13  
14 BY: MATTHEW E. HOFFMAN, ESQ.

15 (TELEPHONICALLY)



## P R O C E E D I N G S

1  
2 THE COURT: Please be seated. Let's begin. I'm  
3 sorry for those who can't sit down because we're so crowded.

4 MR. WAISMAN: Good evening, Your Honor. Shai Waisman  
5 of Weil, Gotshal & Manges on behalf of Lehman Brothers Holdings  
6 Inc. I am joined today by my colleagues, Richard Krasnow,  
7 Michele Meises, and Garrett Fail.

8 Your Honor, Lehman Brothers Holdings Inc. commenced a  
9 Chapter 11 case in this court on September 15th with a petition  
10 and a number of pleadings. If it pleases Your Honor, I propose  
11 we proceed in the following way. Well, this is Your Honor's  
12 court. Perhaps a bit of --

13 THE COURT: I'll listen to the proposal.

14 MR. WAISMAN: Perhaps a bit of background, then take  
15 Your Honor through the pleadings that have been filed and the  
16 request for relief and then scheduling matters. Before we  
17 begin, of course, thank you to court personnel, chambers and  
18 Your Honor for accommodating us and, of course, to our  
19 colleagues here today who I feel we kept waiting for a little  
20 while in the delay in today's hearing and I do apologize.

21 Your Honor, by way of background, Lehman Brothers is  
22 the fourth largest investment bank in the United States. The  
23 company was founded over a hundred and fifty years ago by the  
24 son of a cattle merchant who left his home in Bavaria to start  
25 a dry goods store in Montgomery, Alabama. Today, the company

1 serves the financial needs of corporations, governmental units,  
2 institutional clients and individuals worldwide. The company  
3 employs upwards of 25,000 people and has significant assets the  
4 world over. It has headquarters here in New York, regional  
5 headquarters in London and Tokyo and a network of offices in  
6 North America, Europe, the Middle East, Latin America and the  
7 Asia Pacific region. As of May 31st, 2008, Your Honor, the  
8 company's consolidated assets totaled 639 billion dollars and  
9 its consolidated liabilities totaled approximately 613 billion  
10 dollars.

11 The company itself operates in three business  
12 segments: capital markets, investment banking and investment  
13 management and I'm sure we'll be discussing a lot more about  
14 those segments in the days and weeks to come.

15 The company, of course, is subject to regulatory  
16 oversight. All of the Lehman Brothers entities are subject to  
17 group-wide supervision by the SEC. Several of the  
18 subsidiaries, including the subsidiary named Lehman Brothers  
19 Inc., are registered with the SEC as broker dealers, others as  
20 derivatives dealers and investment advisors. Consequently,  
21 those entities are subject to regulation by the SEC as well as  
22 self-regulatory organizations, national securities exchanges,  
23 such as the New York Stock Exchange, and Municipal Securities  
24 Rulemaking Board.

25 Other subsidiaries of the debtor hold national bank

1     charters and are subject to regulation by federal and state  
2     authorities, including the OTS, the Office of Thrift  
3     Supervision, the FDIC, Federal Deposit Insurance Corporation,  
4     and the Office of the Comptroller of Currency of the United  
5     States. The debtor's insurance subsidiaries are subject to  
6     state insurance regulations in states in which they operate.

7             Lehman Brothers holds memberships or associate  
8     memberships on several international securities and commodities  
9     exchanges, including London, Tokyo, Hong Kong, Frankfurt,  
10    Paris, Milan, Canada, India, Turkey, Russia, Dubai and Qatar.  
11    As I said, the scope of this enterprise is global in nature.

12            The debtor has issued various securities to the  
13    public and has various debt obligations which are disclosed in  
14    the filings and will be disclosed in additional filings going  
15    forward.

16            The events leading up to this Chapter 11 case have  
17    been widely reported and there is nobody who is not familiar  
18    with the global crisis. Because Lehman Brothers is a financial  
19    services firm, it is materially affected by conditions in the  
20    global financial markets as well as worldwide economic  
21    conditions. For most of 2008, Lehman Brothers operated in an  
22    extremely unfavorable global business environment. The  
23    conditions of this environment were characterized by continued  
24    lack of liquidity in the credit markets, significantly  
25    depressed volumes in most equity markets and declining asset

1 values. The slowed growth in major economies all over the  
2 world as a result of declining business and consumer confidence  
3 only added to all of these hardships. Commodity prices have  
4 risen significantly with oil and gold reaching record levels  
5 and the rising cost of industrial production. Consumer  
6 spending was challenged by a combination of lower wealth from  
7 declining housing values, higher commodity prices, impacting  
8 levels of disposable income and falling private sector  
9 employment growth. Low levels of liquidity combined with the  
10 requirement that financial companies de-lever their balance  
11 sheets resulted in downward pressure on financial asset prices  
12 including at Lehman Brothers. These global economic conditions  
13 depressed both the valuations of Lehman's inventory position as  
14 well as transactional volumes and market activity levels in  
15 which Lehman Brothers capital markets and investment banking  
16 business segments operated during the recent fiscal quarters.

17 The instability in the financial and credit markets  
18 created significant liquidity problems for Lehman Brothers.  
19 During this period, although central banks provided  
20 liquidity -- every time I speak, for some reason --

21 THE COURT: There seems to be somebody trying to jam  
22 the line.

23 MR. WAISMAN: Yeah, exactly.

24 THE COURT: I know that there are some people who are  
25 participating telephonically through the court call service and

1 also there is another courtroom where I think we're being  
2 connected. But I don't think it's fair to Mr. Waisman to  
3 proceed like this. So if anybody is on the phone and has a  
4 mute button, please push it now and let's see if that helps.  
5 Maybe a little.

6 MR. WAISMAN: I'm afraid to say anything. Okay.

7 THE COURT: Do you have a BlackBerry or any other  
8 electronic device on you?

9 MR. WAISMAN: No, I don't.

10 THE COURT: Let's try again and hope for a better --

11 MR. WAISMAN: Okay. Picking up where we left off --

12 THE COURT: -- reception.

13 MR. WAISMAN: -- the instability in the financial and  
14 credit markets, with which we're all familiar, created  
15 significant liquidity problems for Lehman Brothers. Central  
16 banks provided additional liquidity to try and jump start the  
17 financial systems but broad asset classes remained very thinly  
18 traded. This was particularly true of domestic subprime  
19 residential mortgages and structured credit products.

20 The devaluation of the pledged assets adversely  
21 impacted Lehman's borrowing availability. As its secured  
22 financing fell out of reach, Lehman Brothers was forced to draw  
23 down on its liquidity pool in order to execute transactions.  
24 At the same time, Lehman's clearing banks required Lehman to  
25 post increasing amounts of collateral to secure against such

1 clearing banks' exposure to Lehman, and the loss of liquidity  
2 created a chain reaction of adverse economic consequences.  
3 Essentially, this began the stranglehold on Lehman Brothers, to  
4 use an often-used cliché in this court, it was the perfect  
5 storm.

6 The company's management responded by exploring  
7 various options to restructure operations, to reduce overall  
8 cost structure and to improve performance. Management  
9 recognized the concerns caused by the company's concentrated  
10 position in real estate related assets and initiated steps to  
11 separate those assets from the rest of Lehman Brothers'  
12 operations.

13 To minimize the effect of pervasive rumors in the  
14 marketplace, which have had significant impact to Lehman  
15 Brothers' competitors recently, the company made several public  
16 announcements on September 10th, 2008 as to its performance.  
17 At the same time, in light of the continuing diminution in  
18 value of Lehman Brothers' assets, the increasing to market  
19 obligations and the debtor's plummeting stock price, management  
20 announced several major initiatives to stabilize the business  
21 as well as pursuing several strategical alternatives all on  
22 multiple tracks.

23 The announcement that I just mentioned on September  
24 10th unfortunately did little to quell the rumors in the market  
25 and concerns about the company's viability. The uncertainty,

1 particularly among the banks, through which the company clears  
2 securities, trades, ultimately made it impossible for the  
3 company to continue to operate its business. The destruction  
4 to its business virtually guaranteed that the company would not  
5 be able to sustain itself long enough to implement all of the  
6 initiatives that had just recently been undertaken.

7 The company's liquidity crisis prompted an emergency  
8 meeting on September 12th, 2008 just down the block here at the  
9 Federal Reserve between debtor's management, officials from the  
10 New York branch of the Federal Reserve Bank, the heads of major  
11 financial institutions, the treasury secretary and the SEC  
12 chairman. These emergency meetings, as was widely reported,  
13 continued throughout the weekend, throughout the 13th and the  
14 14th. The company, in those meetings and outside, continued to  
15 explore a number of strategic alternatives. Unfortunately, at  
16 the end of this weekend on Sunday, it became clear that no  
17 viable alternative existed. Lehman Brothers Holdings Inc. was  
18 left with no alternative but to commence a Chapter 11 case in  
19 this court so that it could preserve its assets and maximize  
20 value for the benefit of all of its customers and all of its  
21 stakeholders.

22 Those, Your Honor, are my introductory remarks about  
23 the business and why we're here today, unfortunately. With  
24 that, I would propose we proceed with a few of the motions that  
25 were filed. These are mainly administrative in nature and I

1 will go through them as quickly as is possible. Of course, if  
2 Your Honor has any questions, you'll stop me and I will answer  
3 them.

4 THE COURT: That's fine. Thank you.

5 MR. WAISMAN: Your Honor has been provided, I  
6 believe, with a binder that was dropped off at chambers and  
7 I'll proceed in virtually the order in here with one exception.  
8 Unfortunately, I know people in the courtroom have not had a  
9 chance to review the outline of the binder but the pleadings  
10 have been filed, have been publicly available.

11 THE COURT: Let me ask you one question about what  
12 typically occurs at the beginning of cases regardless of size.  
13 And that is, some consultation with the United States trustee's  
14 office concerning so-called first day pleadings and orders.  
15 Has that happened here and, if not, is there anyone from the  
16 U.S. trustee's office prepared to, in effect, sign off on the  
17 relief you're requesting?

18 MR. WAISMAN: Thank you, Your Honor. There are  
19 several members of the office here. In fact, the U.S. trustee  
20 herself is here. In terms of consultation, we had obviously,  
21 with a business the size and nature of Lehman Brothers, there  
22 was great concern about any leaks that any preparations were  
23 underway, particularly in light of the fact that there were so  
24 many strategic alternatives that people were working on. And  
25 the genuine fear was that if there was too much discussion --



1 THE COURT: To talk about it would make it worse, in  
2 effect.

3 MR. WAISMAN: -- could make it worse and could  
4 overtake what was otherwise a viable alternative. As a result  
5 and, unfortunately and regrettably, there was no opportunity to  
6 consult with any of the parties prior to the filing, not with  
7 the Court and, regrettably, not with the Office of the United  
8 States Trustee. They are here and I'm sure they'll speak for  
9 themselves. I know they have the pleadings. We did have a  
10 brief conversation in the hallway. They raised an issue with  
11 us and I'm going to represent, I believe, a consensual  
12 resolution on the one issue that was raised on the record. And  
13 that will necessitate an order to be submitted later this  
14 evening reflecting that resolution.

15 MS. HOPE DAVIS: Good evening, Your Honor. Tracy  
16 Hope Davis for Diana Adams, the United States trustee. I'm  
17 here with my colleague, Paul Schwartzberg. Mr. Waisman's  
18 comments are accurate. We did have an opportunity to confer  
19 with respect to the pleadings that have been filed. And I will  
20 allow him to articulate our resolution as to that pleading.  
21 That is the 1007 motion seeking a waiver, if I'm correct, with  
22 respect to compliance with that section.

23 THE COURT: I had some concerns about that pleading  
24 as well.

25 MS. HOPE DAVIS: Yes. And Mr. Waisman and I -- we

1 have spoken and I know that he will articulate our position  
2 with respect to that or our resolution per se.

3 I have nothing further, Your Honor.

4 THE COURT: Okay. Thank you.

5 MS. HOPE DAVIS: Thank you.

6 MR. WAISMAN: One other point of information for the  
7 Court before we do proceed. As part of the conversations with  
8 the Office of the United States Trustee, the debtors -- they  
9 made a request or brought to the office's attention the events  
10 that are going to occur here today and hopefully in the near  
11 future. And there was discussion about the immediate  
12 appointment of an official committee of unsecured creditors.  
13 And, in fact, the office has solicited acceptances to serve on  
14 a committee and there will be a meeting, organizational  
15 meeting, for the creditors' committee this evening at 6 p.m.  
16 and the debtors very much hope that out of that there will be a  
17 creditors' committee and professionals retained so that there  
18 is somebody -- there is a committee to engage in the process  
19 going forward on a very fast track.

20 THE COURT: Okay. Fine.

21 MR. WAISMAN: Your Honor, the first motion, which  
22 would appear in Your Honor's binder under Tab 4, which is the  
23 Section 362 motion, otherwise known as the automatic stay  
24 comfort order -- Your Honor, this is a motion that, in essence,  
25 reflects precisely what the automatic stay provides and nothing

1 more. This is a global business. There are many parties-in-  
2 interest, both in this country and abroad, that do not  
3 understand the implications of the automatic stay and, in fact,  
4 don't -- for some strange reason don't take the time to refer  
5 back to the Bankruptcy Code when the debtor complains about  
6 violations and insists on seeing orders. Because of the nature  
7 of the debtor's global business and the thousands, if not  
8 hundreds of thousands, of parties-in-interest, this order is  
9 very important to the debtors.

10 Two parties have raised concerns to make sure that  
11 the order does not go beyond the limitations of Section 362,  
12 including the United States Attorney's Office. What we would  
13 propose is this order be approved on the record. We would  
14 then, together with the two parties that have complained -- not  
15 complained, but asked for clarifying language, work out a  
16 consensual order and submit it to chambers when it has been  
17 worked out among the parties.

18 THE COURT: I will approve this motion subject to the  
19 drafting process that you described. It looks like there's  
20 somebody who maybe doesn't want me to approve it because I see  
21 Mr. Herman standing. Or at least he wants to comment.

22 MR. HERMAN: Thank you, Your Honor. Just want to  
23 comment --

24 THE COURT: You'll have to speak up so you can be  
25 heard by the recording system.

1 MR. HERMAN: Sorry. Can you hear me from here? Or  
2 should I come up?

3 THE COURT: I can hear you but I'd like the record to  
4 reflect what you have to say. So you might want to struggle to  
5 come forward.

6 MR. HERMAN: Ira Herman, Thompson & Knight, for  
7 Chevron, Your Honor. Chevron would like to be involved in the  
8 drafting of the order to make sure that the order does not go  
9 on beyond the scope of Section 362.

10 THE COURT: Well, I think I'm the person who's going  
11 to confirm that it doesn't go beyond the scope of 362, not you.

12 MR. HERMAN: Your Honor --

13 THE COURT: So here's what I propose. So that we  
14 don't convert the drafting of an order which, by the  
15 representations of counsel, will not go beyond Section 362, I  
16 strongly urge that something this important to the debtor and  
17 this routine, relatively speaking, in large Chapter 11 cases in  
18 this district, not be converted into a drafting exercise. So,  
19 while I understand your request, you're not going to get  
20 approval from me.

21 MR. HERMAN: Fair, Your Honor. My understanding was  
22 that there were two parties who have raised objections and  
23 would be reviewing the order, the form of order. I was just  
24 asking for the similar --

25 THE COURT: If the debtor is willing to do that with

1     you, that's fine because I think consensual behavior is to be  
2     encouraged. But if what you're looking for is a statement from  
3     me that you have that right simply because you stood up, I'm  
4     not going to give you that.

5             MR. HERMAN: Well, may I ask Mr. Waisman if it'll  
6     accommodate Chevron?

7             MR. WAISMAN: Perhaps there's a way to resolve this.  
8     Maybe I should continue with these motions. And perhaps Mr.  
9     Herman could speak to my partner, Mr. Krasnow, and agree on  
10    language. And if not, we would come back and --

11            THE COURT: Well, before you move on, because I think  
12    that there's nothing more important, at least as I've seen  
13    press reports, than confirming that the automatic stay applies  
14    globally. And we have a variety of important first day  
15    motions. And ordinarily, this would not be an important one.  
16    But I don't want there to be any even scintilla of a hiccup  
17    with respect to this issue. So I don't want to move on and  
18    make this a matter for discussion.

19            I'd like to understand what the issues are that have  
20    been identified with the language of the order as it presently  
21    exists. And to the extent that all we are doing is carving  
22    back something so that it fits neatly within the precise  
23    language of 362, that should be a relatively simple  
24    undertaking. What's the issue or what are the issues?

25            MR. HERMAN: Your Honor, to the extent the language

1 of the order is carved back so that it follows 362 and so  
2 there's no question that the safe harbor provisions are  
3 preserved, there is no issue. To the extent the order goes  
4 beyond Section 362, you just heard the concern.

5 THE COURT: Okay.

6 MR. WAISMAN: Your Honor --

7 THE COURT: I think everybody is concerned about the  
8 safe harbor provisions in this case. So I can't imagine that  
9 one client represented by one law firm would have a particular  
10 interest in that beyond anybody else.

11 MR. WAISMAN: That is the issue that has been raised  
12 by the other parties and, in fact, of course we confirm this is  
13 not meant to affect the safe harbor provisions in Section 362.  
14 And I think that is an easy modification to be made very  
15 quickly to the order.

16 THE COURT: Fine. Let's do the following. I'm  
17 approving your comfort order. And I want it to provide that  
18 comfort immediately and without reservation. The  
19 understanding, however, is that the language of the comfort  
20 order will be so crafted as to fit neatly and thoroughly within  
21 the scope of Section 362 as it's drafted including all of its  
22 provisions. Fair enough?

23 MR. WAISMAN: Fair enough.

24 THE COURT: Does that accurately state what the  
25 debtor's intent is as well?

1 MR. WAISMAN: Precisely.

2 THE COURT: Fine. Then I can't imagine that we're  
3 going to have a major issue except for whether or not there was  
4 a scribner's error. So let's move forward.

5 MR. HERMAN: Thank you, Judge.

6 MR. WAISMAN: Under Tab 5, Your Honor, it's the  
7 debtor's motion for the waiver of the requirements of local  
8 Bankruptcy Rule 1007(2)(a) and 1007(2)(b). Your Honor --

9 THE COURT: This is the one the U.S. trustee spoke  
10 to.

11 MR. WAISMAN: That is correct, Your Honor. And the  
12 agreement with the Office of the United States Trustee is that  
13 rather than make it an explicit waiver, we would have a forty-  
14 five day extension -- the debtor would have a forty-five day  
15 extension to come into compliance with the local rule, subject  
16 to the debtor's right to come back and ask for a waiver or  
17 additional time. And I have, of course, represented to the  
18 Office of the United States Trustee that we would, in fact,  
19 endeavor to comply with the requirements of the local rule  
20 during that time.

21 THE COURT: Fine. That resolution is satisfactory to  
22 me. Is it satisfactory to the office?

23 MS. HOPE DAVIS: It is, Your Honor. Thank you, Mr.  
24 Waisman.

25 THE COURT: I'll make this one comment. We sought to

1 determine whether or not the representations made in this  
2 motion were, in fact, true in terms of the ability to publicly  
3 access most of the information anyway. And we may not have  
4 done it perfectly. But the one item that seemed not to be easy  
5 to locate publicly but seems to be relatively easy for you to  
6 comply with is the identity of the holders of the five largest  
7 secured claims. I'm not proposing anything different from what  
8 you've already agreed to with the Office of the U.S. Trustee.  
9 But you might go a long way toward providing the public with  
10 everything that they would ordinarily have with immediate  
11 compliance by simply providing that information online. So I  
12 make that suggestion.

13 MR. WAISMAN: Thank you, Your Honor. The debtor  
14 appreciates the suggestion and we'll endeavor to comply with  
15 the Court's suggestion and the local rule.

16 From there, Your Honor, I would turn, actually, to  
17 Tab 10, which is the extension of time to file schedules of  
18 assets and liabilities and waiving the requirement to file an  
19 equity list. I simply do so so we don't pop up and down here  
20 as my partner, Mr. Krasnow, will be handling the motion  
21 confirming the status of clearing advances which appears under  
22 Tab 10 -- under Tab 9, excuse me.

23 So, proceeding with the schedules motion under Tab  
24 10, Your Honor, this is the standard waiver motion. The debtor  
25 here requests an additional forty-five days, that is, forty-



1 five days beyond the fifteen days for a total of sixty days  
2 subject to the debtor's right to come back and request  
3 additional time if the debtor cannot comply. I'm happy to  
4 answer any questions Your Honor has.

5 THE COURT: I have no questions. And I assume  
6 because there's no comment from the U.S. trustee's office that  
7 that's acceptable as well to your office.

8 MS. HOPE DAVIS: It is, Your Honor.

9 THE COURT: Thank you.

10 MR. WAISMAN: Thank you.

11 THE COURT: I'll grant that motion.

12 MR. WAISMAN: Your Honor, finally, for me at least,  
13 the application to retain Epiq Bankruptcy Solutions, LLC as  
14 claims and noticing agent. Your Honor this retention has been  
15 vetted and cleared with the assistant clerk of the court. It  
16 is the standard retention application for Epiq Bankruptcy  
17 Solutions and, in fact, they are up and running --

18 THE COURT: It's fine. I've also cleared this with  
19 the clerk of the court. So you're good to go.

20 MR. WAISMAN: Upon the highest authority, Your Honor.  
21 Thank you.

22 Your Honor, Richard Krasnow, my partner, will address  
23 the clearing advances motion.

24 MR. KRASNOW: I think it's still the afternoon so  
25 good afternoon, Your Honor.

1 THE COURT: Depends on what continent.

2 MR. KRASNOW: Although I'm not sure what day it is,  
3 Your Honor.

4 Your Honor, in his opening remarks, Mr. Waisman  
5 referred to the various functions -- or to the functions and  
6 critical functions that are provided by various financial  
7 institutions in connection with clearing various securities  
8 transactions. Without these clearing entities, financial  
9 transactions involving securities, derivatives and the like,  
10 simply could not be implemented. JPMorgan Chase, Your Honor,  
11 is the main clearing agent for all transactions of, among  
12 others, Lehman Brothers Inc., the broker dealer, the main  
13 broker dealer of the holdings. And as Mr. Waisman indicated,  
14 it is a non-debtor.

15 On any one day, the level of securities transactions  
16 that take place during the course of the day can amount to the  
17 trillions. This is one of those cases, Your Honor, when you  
18 drop a zero with respect to the amounts of assets, the volume  
19 of transactions and the liabilities, it almost seems like a  
20 rounding error. It doesn't seem real but it very much is.

21 Your Honor, JPMorgan Chase operates pursuant to a  
22 variety of agreements, clearing agreements, and as well a  
23 guaranty of the obligations of various Lehman entities  
24 including, in particular, the broker dealer by holdings. Those  
25 obligations by the broker dealer as well as holdings are

1       secured. And, Your Honor, in that regard, JPMorgan Chase holds  
2       what we estimate to be collateral having the value of  
3       approximately seventeen billion dollars in either securities or  
4       cash, the cash amount being approximately 6.9 billion dollars.  
5       Most of the collateral that JPMorgan Chase holds represent  
6       assets of Lehman Brothers Inc. The cash component, however,  
7       represents monies which were posted, deposited as cash  
8       collateral prior to the Chapter 11 case's commencing.

9               Your Honor, JPMorgan Chase has indicated that they  
10       are prepared to continue to provide this critical function  
11       without which, for example, customer transactions could not  
12       happen. But during the course of any day, as I understand  
13       these transactions -- and Mr. Novikoff is here on behalf of  
14       JPMorgan Chase and I encourage him to correct me or to fill in  
15       any blanks with respect to exactly how this all works. But  
16       during the course of any one day, there are, in essence,  
17       advances which are made by JPMorgan Chase with respect to the  
18       transactions that occur. Securities are delivered. You  
19       haven't yet received the cash with respect to the securities  
20       and the like which is, in part, what these collateral secures  
21       and what the guaranty that was issued by the holdings company  
22       covers.

23              Your Honor, JPMorgan Chase has indicated that it is  
24       willing to continue to act as the clearing agent. However,  
25       they do need a certain level of comfort, which is completely

1 understandable, that with respect to the ongoing transactions  
2 that will take place that indeed the guaranty, which was issued  
3 by Lehman Brothers, will continue to cover those transactions  
4 and they will continue to be secure with respect to their  
5 existing collateral as to those future transactions. In our  
6 view, we believe that the guaranty and the collateral covers  
7 not only those transactions which have already occurred but as  
8 well the future transactions. But given the amounts involved  
9 here, we believe it is perfectly understandable that JPMorgan  
10 Chase should want a level of comfort, slightly different  
11 comfort order than we discussed earlier but just as key, if not  
12 more critical, in terms of the broker dealer being able to  
13 continue to operate in the ordinary course and customers to  
14 continue to be protected.

15 Your Honor, we would request, therefore, that the  
16 Court -- if you will confirm that indeed the collateral they  
17 have and the existing guaranty will cover all future  
18 transactions or, alternatively, confirm that the advances and  
19 financial accommodations that JPMorgan Chase will be providing  
20 to us on an ongoing basis are covered by Section 364 and that  
21 their existing collateral can be looked to to secure those  
22 obligations. The lien which they assert with respect to the  
23 collateral will have the same status it had pre-petition. To  
24 our knowledge, nobody else has a lien with respect to that  
25 collateral. This is not a situation of priming, junior liens

1 or the like. It is very straightforward, Your Honor.

2 THE COURT: We're talking about a possessory lien?

3 MR. KRASNOW: It's my understanding it is a  
4 possessory lien. Your Honor, we have described somewhat in the  
5 motion papers the nature of these transactions. As I've  
6 indicated, Mr. Novikoff is here in case there are any questions  
7 the Court has that I perhaps cannot answer. But for the  
8 reasons I've indicated, we would request that the relief be  
9 granted.

10 THE COURT: Fine. I would like to hear from Mr.  
11 Novikoff, principally to confirm why this comfort is needed. I  
12 realize that that's exactly what has been presented by counsel  
13 for the debtor but it would be helpful to hear it from you as  
14 counsel for JPMorgan Chase.

15 And additionally, I've reviewed the statement which  
16 you filed this afternoon. And there was one thing that I noted  
17 that caught my eye and I'm interested in understanding a little  
18 bit more about it. There was a reference in the statement to  
19 Section 741 and the definition of securities contract and the  
20 assertion that these documents all fit that definition. I'm  
21 not quarreling with that assertion nor am I making a finding  
22 now that the assertion is correct. But I'm interested in  
23 knowing why that assertion is significant for purposes of the  
24 relief that you're asking me to grant. And it may not be but  
25 it caught my eye.

1 MR. NOVIKOFF: Okay. Your Honor, if I can put in  
2 context why these advances were made, why it is that we are  
3 seeking the comfort -- and first I should state for the record,  
4 I'm Harold Novikoff of Wachtell, Lipton, Rosen & Katz. I'm  
5 here with my colleague, Amy Wolf, on behalf of JPMorgan Chase  
6 Bank, N.A.

7 As Mr. Krasnow indicated, JPMorgan is the principal  
8 clearing bank for the domestic broker dealer, Lehman Brothers  
9 Inc., as well as for some of the foreign broker dealers. The  
10 way that Lehman Brothers Inc., the broker dealer, has  
11 historically financed its dealer operations is that during the  
12 course of a day, JPMorgan, under these clearance arrangements  
13 which have been provided to the Court, provides intra-day  
14 advances. At the end of the day, overnight financing is  
15 provided by third party investors through what's called tri-  
16 party repurchase agreement arrangements. Those investors are  
17 principally mutual funds, money market funds, a whole host of  
18 entities that are looking to either invest money overnight or  
19 on a relatively short term basis.

20 On Monday morning, after the holding company had  
21 commenced the Chapter 11 case, there was approximately eighty-  
22 seven billion dollars that had been advanced by these various  
23 investors and in the ordinary course would be -- they would get  
24 their money back from an advance by JPMorgan Chase. And that  
25 is the way this has worked for quite a while. JPMorgan Chase,

1 in theory, had the ability to say no, it's a discretionary  
2 advance, we don't want to do it. But there was a great amount  
3 of concern and that concern was expressed as well to us by the  
4 Federal Reserve Bank of New York and just by knowledge of the  
5 market that we would be creating market havoc had we not made  
6 an advance at that time. So we did. So eighty-seven billion  
7 was advanced. At the end of the day, a number of those tri-  
8 party repo investors did not show up again and working with the  
9 Federal Reserve Bank of New York, Lehman financed that position  
10 overnight both with some tri-party investors as well as through  
11 the primary dealer credit facility run by the Fed.

12 And then this morning, Your Honor, there was a  
13 smaller advance had to be made for fifty-one billion dollars.  
14 It became clear to us during the day yesterday, and we brought  
15 this to the attention of Mr. Krasnow's partner, Mr. Miller,  
16 that we realized that an argument may exist that because we  
17 were making discretionary advances post-petition from the  
18 perspective of the parent that there might be some argument  
19 that we were effectively doing an extension of credit by the  
20 parent.

21 THE COURT: Even though the money is going to a non-  
22 debtor?

23 MR. NOVIKOFF: Absolutely. The money is going to a  
24 non-debtor. And I'd like to point out, the advances we were  
25 talking about are solely advances to non-debtors. It was

1       incorrectly reported in the press just a while ago that the  
2       advances were made to the holding company. That's incorrect.  
3       All the advances were made to non-debtor broker dealers.

4               Your Honor, we think the right result is that, in  
5       fact, it does not amount to that but -- and it may be an  
6       abundance of caution, but when you're talking about eighty  
7       billion dollars or fifty billion dollars, it's difficult to be  
8       overly cautious. So we did seek comfort from this Court right  
9       away before we are doing more advances and we came to the Court  
10      as early as we could with this. We wanted to come to the Court  
11      so we knew that either -- so we knew that to the extent that  
12      364 applies, what we're doing is authorized and we're not  
13      violating anything. We are not seeking to change the status of  
14      where things would have been had it still been pre-petition.  
15      We are not seeking a validation of our liens. We are not  
16      seeking a validation of the guaranty. We are not even seeking  
17      administrative expense status. This is probably the only time  
18      I will ever come to you post-petition and be able to say those  
19      words.

20             THE COURT: And you've done it in front of a very  
21      large crowd.

22             MR. NOVIKOFF: That's right. But JPMorgan, in these  
23      circumstances, does want comfort that we are not violating the  
24      law in doing that and that what's going on is authorized.

25             The reason we mentioned securities contract and,



1 frankly, these particular pleadings went through some  
2 differences in formulation over time, when Your Honor takes a  
3 look at the definition of securities contracts, BAPCPA in 2005  
4 amended the definition of securities contract to include within  
5 the long list of transactions that are covered are advances  
6 made in connection with the clearance of securities. We think  
7 that's exactly what this is. In addition, near the end of the  
8 definition, you will see that what is included as a securities  
9 contract includes security arrangements and guaranties made in  
10 connection with a securities contract. So the parent guaranty  
11 is itself a securities contract as is the security agreement  
12 that governs that.

13           One item that we had thought about which deals with  
14 this is the damages for termination, acceleration or  
15 liquidation of securities contract, is different from what you  
16 would normally see with a normal claim which would normally be  
17 determined as of the petition date. In the case of a  
18 termination of a securities contract, it's determined as of the  
19 date of the termination. So under 562(a) of the Code, we think  
20 also supports this but we did not want to simply rely on that  
21 provision. But that's why there is some mention of that in the  
22 papers. And we're not asking Your Honor for a determination on  
23 that issue. We are really just asking for a determination that  
24 with respect to the advances we made today, the large advance  
25 that we will have to make tomorrow morning, the advance that we

1 will make the day after that, that we are effectively in the  
2 same position that we would have been pre-petition, that is,  
3 that it remains covered by the parent guaranty and by the  
4 collateral that secures that guaranty. Whatever the legitimacy  
5 of that guaranty, whatever the legitimacy of that collateral,  
6 we are looking for that comfort.

7 THE COURT: Is there any objection by any party to  
8 the relief sought by the debtor that has just been explained in  
9 greater detail by counsel for JPMorgan Chase?

10 MS. LEVENTHAL: Your Honor, this is Shari Leventhal  
11 for the Federal Reserve Bank of New York. We'd like to just  
12 lend our support for the motion that has been made. And we  
13 would note that we believe that the services that Chase has  
14 been providing are critical to the smooth functioning of  
15 financial markets.

16 THE COURT: And I am glad that was not an objection.

17 MR. KRASNOW: As am I, Your Honor.

18 THE COURT: That was that suspenseful moment when  
19 someone stands and we're not sure what's going to happen next.  
20 I believe that that -- Mr. Krasnow, do you have something to  
21 add?

22 MR. KRASNOW: No, Your Honor. No, Your Honor.

23 THE COURT: I believe that a comfort order, as we're  
24 characterizing it, for the benefit of JPMorgan Chase under  
25 these clearance agreements, while unusual in my experience, is

1 entirely appropriate and consistent with the need to provide  
2 market liquidity for this debtor and its affiliates during the  
3 early stages of this bankruptcy case and beyond, for that  
4 matter. And I'm perfectly prepared to grant the relief,  
5 particularly since notwithstanding the short notice and a  
6 packed courtroom, no one objects. And I'm confident that no  
7 one, even after further deliberation, would object. I approve  
8 that relief.

9 MR. KRASNOW: Thank you, Your Honor.

10 MR. NOVIKOFF: Thank you, Your Honor.

11 MR. WAISMAN: Shai Waisman for Lehman Brothers  
12 Holdings Inc. Your Honor, that concludes the matters that have  
13 been filed and with respect with which we seek to go forward  
14 today. The events in the financial markets continue to occur  
15 on a daily basis. And, you know, while Lehman Brothers has  
16 succumbed to the distress in the market, it remains the fourth  
17 largest investment bank and a significant player. It intends  
18 to prosecute these cases to preserve, as I said earlier, value  
19 to its customers and the value of its enterprise for the  
20 benefit of all stakeholders, its employees included.

21 We have been in touch with chambers and do have a  
22 tentative hearing scheduled for tomorrow at 11 a.m.

23 THE COURT: Yes.

24 MR. WAISMAN: We hope to get on the docket additional  
25 pleadings, both administrative in nature and possibly more

1 substantive in nature, but that is yet to be determined. And I  
2 believe people are working on that now. And obviously, it goes  
3 without saying that as soon as we know anything, it'll be  
4 reflected on the docket. It will be e-mailed and faxed to the  
5 extent practicable to all of the parties-in-interest. And to  
6 the extent we go forward with anything tomorrow, we will have  
7 copies available here in Court for parties to review.

8 With that, the debtor has nothing further other than  
9 to thank the Court for its time this evening.

10 THE COURT: That's fine. I noted that you chose your  
11 words very carefully in describing what may happen tomorrow at  
12 11 a.m. Just so you're aware of my calendar for tomorrow, I  
13 have a 10:00 calendar that was previously listed for various  
14 cases, before the Lehman Brothers case filed, at 10 a.m. I'm  
15 hopeful that I will conclude that by 11:00. But I do note that  
16 there is a lot of public interest in this case and for that  
17 reason, would suggest that -- and I don't want to create a  
18 crowd problem here -- that people not, in effect, file in to  
19 try to get good seats while I'm in the middle of handling a  
20 series of miscellaneous other matters. So I would propose,  
21 even though it may create some traffic congestion, that people  
22 come after 10:30 for the 11:00 hearing, assuming it's going  
23 forward. And I also assume that you'll provide timely notice  
24 to all parties if, in fact, there is no hearing.

25 MR. WAISMAN: As soon as we know, a notice will be

1 posted to the docket. And even if there is no hearing or as  
2 soon as we conclude that there will be no hearing if that  
3 should happen, a notice will be filed and that notice also will  
4 be e-mailed and faxed to all parties-in-interest.

5 THE COURT: Fine. Just to let you know that you're  
6 in the middle of a sandwich, I also have a 2 p.m. calendar  
7 tomorrow. So we'll do the best we can with the schedules that  
8 exist.

9 MR. WAISMAN: Absolutely. Thank you, Your Honor.

10 THE COURT: All right. We're adjourned for the  
11 evening.

12 (Whereupon these proceedings were concluded at 5:58 p.m.)  
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## I N D E X

## R U L I N G S

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Debtor's motion for order confirming status of clearing advances granted	35	6

## C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

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LISA BAR-LEIB

Veritext LLC

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: September 17, 2008